

**REMARKS:**

Claims 1 and 3-20 are presented for examination. Claims 1 and 3-20 are amended hereby. Claim 2 is cancelled hereby (without prejudice or disclaimer).

Reconsideration is respectfully requested of the objection to the abstract of the disclosure.

The abstract of the disclosure has been amended hereby along the lines suggested by the Examiner at page 2 of the July 9, 2008 Office Action.

Therefore, it is respectfully submitted that the objection to the abstract of the disclosure has been overcome.

Reconsideration is respectfully requested of the objection to the disclosure.

Applicants respectfully submit that the arrangement of the specification referred to by the Examiner is a **suggested** arrangement, **not** a requirement (see, e.g., the text cited by the Examiner at page 5 of the July 9, 2008 Office Action -- "As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order." (emphasis added)).

Therefore, it is respectfully submitted that the objection to the disclosure has been overcome.

Reconsideration is respectfully requested of the rejection of claims 1 and 5 under 35 U.S.C. 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As suggested by the Examiner, claim 1 has been amended hereby to more clearly tie the method steps to a computer.

Further, claim 5 has been amended hereby to delete the term "essentially".

Therefore, it is respectfully submitted that the rejection of claims 1 and 5 under 35 U.S.C. 112, second paragraph, has been overcome.

Reconsideration is respectfully requested of the rejection of claims 1 and 3-20 under 35 U.S.C. 101, as allegedly being directed to non-statutory subject matter (of note, the cancellation of claim 2 has rendered its rejection moot).

Initially, it is respectfully submitted that applicants do not necessarily concur with the Examiner with regard to the Examiner's analysis of these claims under the applicable rules, regulations and case law.

Nevertheless, in order to expedite prosecution of the present application, independent claim 1 (the sole pending independent claim) has been amended hereby to more clearly recite

statutory subject matter.

More particularly, independent claim 1 has been amended hereby to explicitly recite various steps carried out with a computer (of note, each of claims 3-20 has been amended hereby to recite a method depending (directly or indirectly) from independent claim 1).

Therefore, it is respectfully submitted that the rejection of claims 1 and 3-20 under 35 U.S.C. 101, as allegedly being directed to non-statutory subject matter, has been overcome.

Reconsideration is respectfully requested of the rejection of claim 1 under 35 U.S.C. 102(b) as allegedly being anticipated by U.S. Patent Application Publication No. 2002/0103852, hereinafter "Pushka".

Initially, it is respectfully noted that applicants do not concur with the Examiner in connection with the rejection of claim 1 under 35 U.S.C. 102(b) as allegedly being anticipated by Pushka.

For example, while the Examiner apparently rejects independent claim 1 under 35 U.S.C. 102(b) (at page 9 of the July 9, 2008 Office Action), the Examiner later acknowledges in connection with a subsequent 35 U.S.C. 103(a) rejection directed, *inter alia*, to independent claim 2 (at page 11 of the July 9, 2008 Office Action) that Pushka "does not specifically disclose a pre-paid forward contract obligates the second entity to deliver to the first entity a variable number of shares of stock in the first entity".

**Thus, since both of independent claims 1 and 2 had included this pre-paid forward contract feature (acknowledged by the Examiner as not being specifically disclosed in Pushka), it is respectfully submitted that the rejection under 35 U.S.C. 102(b) is improper for at least this reason.**

Moreover, it is noted that independent claim 1 had recited (even before amendment hereby) a security including both a post-paid forward contract and debt.

It is respectfully submitted, however, that a review of the portions of Pushka cited by the Examiner reveals that while a forward contract appears to be discussed, there does not appear to be any teaching, showing or even suggestion to include in a security both a post-paid forward contract and debt.

If the Examiner is of a different opinion, it is respectfully submitted that the Examiner provide clarification of where, specifically, Pushka discusses including in a security both a post-paid forward contract and debt.

In view of the above discussion, it is respectfully submitted that independent claim 1 is

clearly not anticipated by Pushka.

Nevertheless, in an effort to expedite prosecution of the application, applicants will now discuss how a studied review of Pushka reveals that this reference goes even further, and actually teaches away from the currently claimed invention.

In this regard, it is noted that Pushka relates in general to a method and system for optimizing investment performance of an economic entity. The method includes the steps of transferring market risk but not credit risk from a first account to a second account through a counterparty and recognizing either gains and losses in the second account at a future date from the original investment date. The market risk is preferably transferred between the first and second accounts by way of derivative transactions.

More particularly (and in connection specifically with a forward contract transaction), Pushka states that the transaction works as follows:

The transaction works as follows with reference to FIG. 1. A first account (1), beginning with its original portfolio, enters into a forward contract (contract A) (2) with a counterparty, that is based on an index or combination of indices making up the proxy portfolio. Therefore, the proxy portfolio constitutes the forward contract's underlying asset. Having identified the value of the proxy portfolio at the time of the contract, the first account agrees to pay the counterparty the difference by which a rate of interest (such as the bank prime rate) falls below the combined index return on the proxy portfolio. The other party agrees to pay the first account the difference by which that rate of interest exceeds the combined index return on the proxy portfolio. So, for instance, if the interest rate specified in the forward contract is 7%, and the combined index return on the proxy portfolio is 10%, the first account pays the difference to the counterparty. However, if the combined index return on the proxy portfolio is 4%, the counterparty pays the first account the difference between that return and the contractually identified rate of interest of 7%. These payments are settled at a specific future date identified in the contract, and collateralized on a mark-to-market basis. Contract A preferably has a maturity in excess of one year, and can be as long as the two parties agree. This can be decades. (paragraph 124) (emphasis added)

As seen from the above, the account entering into the forward contract with the counterparty has a portfolio and the forward contract is based on an index or combination of indices making up the proxy portfolio (that is, wherein the proxy portfolio constitutes the forward contract's underlying asset).

Thus, as stated, the underlying asset associated with the forward contract is the proxy portfolio.

**In marked contrast, under the present invention (as recited in independent claim 1) a company enters into a sale with another entity under which a post-paid forward contract obligates the other entity to purchase a fixed number of shares of stock of the company itself.**

**That is, Pushuka specifically indicates that the proxy portfolio constitutes the forward contract's underlying asset, actually teaching away from the claimed invention in which a company enters into a sale with another entity under which a post-paid forward contract obligates the other entity to purchase a fixed number of shares of stock of the company itself.**

Therefore, it is respectfully submitted that the rejection of claim 1 under 35 U.S.C. 102(b) as allegedly being anticipated by Pushka has been overcome.

Reconsideration is respectfully requested of the rejection of claims 3, 6-7, 9-10, 14-15 and 18-20 under 35 U.S.C. 103(a) as allegedly being unpatentable over Pushka in view of Seattle Times, March 29, 2001, hereinafter "Seattle Times" (of note, the cancellation of claim 2 has rendered its rejection moot; of further note, each of claims 3, 6-7, 9-10, 14-15 and 18-20 has been amended hereby to depend from independent claim 1).

Initially, it is respectfully noted that applicants do not necessarily concur with the Examiner in connection with the alleged obviousness of the Pushka/Seattle Times hypothetical combination proposed by the Examiner.

Nevertheless, in order to expedite prosecution of the application, it will simply be noted here (as discussed in detail above in connection with the 35 U.S.C. 102(b) rejection) that Pushka actually teaches away from the claimed feature directed to the forward contract relating to stock of the company being a party to the contract.

Thus, it is respectfully submitted that even if Seattle Times were to be combined with Pushka as suggested by the Examiner, the resulting hypothetical combination would still fail to teach, show or even suggest the claimed invention (and would even teach away from the claimed invention).

Therefore, it is respectfully submitted that the rejection of claims 3, 6-7, 9-10, 14-15 and 18-20 under 35 U.S.C. 103(a) as allegedly being unpatentable over Pushka in view of Seattle Times has been overcome.

Reconsideration is respectfully requested of the rejection of claims 4 and 5 under 35 U.S.C. 103(a) as allegedly being unpatentable over Pushka in view of Seattle Times and further

in view of Florida Bar Journal, hereinafter “Rubinger”.

Initially, it is noted that applicants do not necessarily concur with the Examiner with regard to the pending claims and the Pushka, Seattle Times and Rubinger references.

Nevertheless, in order to expedite prosecution of the application, it will simply be noted here that each of claims 4 and 5 depends (directly or indirectly) from independent claim 1 discussed above.

Thus, while these claims may recite their own patentably distinct features, it will simply be submitted here that each of claims 4 and 5 is patentably distinct for at least the same reasons as the independent claim from which it depends.

Therefore, it is respectfully submitted that the rejection of claims 4 and 5 under 35 U.S.C. 103(a) as allegedly being unpatentable over Pushka in view of Seattle Times and Rubinger has been overcome.

Reconsideration is respectfully requested of the rejection of claims 8, 16 and 17 under 35 U.S.C. 103(a) as allegedly being unpatentable over Pushka in view of Seattle Times and further in view of U.S. Patent 7,236,955, hereinafter “Sugahara”.

Initially, it is noted that applicants do not necessarily concur with the Examiner with regard to these claims and the Pushka, Seattle Times and Sugahara references.

Nevertheless, in order to expedite prosecution of the application, it will simply be noted here that each of claims 8, 16 and 17 depends (directly or indirectly) from independent claim 1 discussed above.

Thus, while these claims may recite their own patentably distinct features, it will simply be submitted here that each of claims 8, 16 and 17 is patentably distinct for at least the same reasons as the independent claim from which it depends.

Therefore, it is respectfully submitted that the rejection of claims 8, 16 and 17 under 35 U.S.C. 103(a) as allegedly being unpatentable over Pushka in view of Seattle Times and further in view of Sugahara has been overcome.

Reconsideration is respectfully requested of the rejection of claims 11-13 under 35 U.S.C. 103(a) as allegedly being unpatentable over Pushka in view of Seattle Times and further in view of U.S. Patent 6,263,321, hereinafter “Daugherty”.

Initially, it is noted that applicants do not necessarily concur with the Examiner with regard to the pending claims and the Pushka, Seattle Times and Daugherty references.

Nevertheless, in order to expedite prosecution of the application, it will simply be noted

here that each of claims 11-13 depends (directly or indirectly) from independent claim 1 discussed above.

Thus, while these claims may recite their own patentably distinct features, it will simply be submitted here that each of claims 11-13 is patentably distinct for at least the same reasons as the independent claim from which it depends.

Therefore, it is respectfully submitted that the rejection of claims 11-13 under 35 U.S.C. 103(a) as allegedly being unpatentable over Pushka in view of Seattle Times and further in view of Daugherty has been overcome.

Finally, it is noted that this Amendment is fully supported by the originally filed application and thus, no new matter has been added. For this reason, the Amendment should be entered.

For example, support for the amendment to claim 1 regarding utilizing a computer to input, calculate and record may be found at page 27, line 18 to page 28, line 1.

Further, support for the amendment to claims 1, 3, 4, 6, 14, 15, 18 and 18 regarding the prior “first entity” now being claimed as “company” may be found at page 9, line 8 to page 11, line 10.

Favorable reconsideration is earnestly solicited.

Respectfully submitted,  
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